

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLAUDELL TURNER,

Defendant-Appellant.

UNPUBLISHED

March 11, 2003

No. 237201

Oakland Circuit Court

LC No. 01-176715-FH

Before: Hoekstra, P.J., and Smolenski and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession with intent to deliver less than fifty grams of a mixture containing cocaine, MCL 333.7401(2)(a)(iv), two counts of possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f.¹ He appeals as of right, and we affirm.

Police executed a narcotics search warrant for an apartment located at 208 Old Oak in Pontiac, Michigan. Defendant, the contracted tenant of the apartment, and another man were in the living room on the couch. During the search of the premises, police officers found rock and powder cocaine in the bedroom. The cocaine weighed approximately twenty-three grams. An automatic Tac 9 gun was found in the closet area of the bedroom. A scale with a white powder residue was found in the kitchen cupboard. Insurance and credit card bills addressed to defendant at that address were found in the bedroom and in the kitchen. Cash in the amount of \$5,000 was found in a shoe in the bedroom, and cash in the amount of \$4,380 was found on the bed.

Officer William Olsen had been a police officer for nearly seven years, with two and a half years experience in the narcotics unit. He had participated in narcotics training at the police academy and during various seminars organized by the Detroit Police Department and United States Customs. He had participated in over 200 search warrants during his time in the narcotics unit and had at least 100 drug arrests before becoming a member of the narcotics unit. Officer Olsen had testified as an expert in narcotics trafficking on approximately twenty occasions.

¹ Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to one to twenty years imprisonment for the possession with intent to deliver and felon in possession of a firearm convictions and two years' imprisonment for the felony-firearm convictions.

Defense counsel objected to the qualification as an expert based on the limited amount of education Officer Olsen had received and based on the fact that he was supervised by a superior police officer. The trial court ruled that Officer Olsen could testify as an expert in narcotic trafficking. Officer Olsen concluded that the weapon, cash, scale, and amount of cocaine were consistent with delivery of drugs, rather than personal use.

Defendant testified that he did not reside in the apartment, but lived with his girlfriend and children in another residence. Defendant allowed his sister's ex-boyfriend, Marvin McGee, to reside in the apartment. Defendant went by the apartment to pick up his mail. At the apartment, a friend was there, and the two men did drugs together. Defendant admitted to personal use of cocaine, but denied any delivery. Defendant was found guilty as charged.

Defendant first alleges that the trial court abused its discretion by allowing Officer Olsen to testify as an expert in narcotics trafficking. We disagree. The admission of drug profile testimony from police officers is reviewed for an abuse of discretion on a case-by-case basis. *People v Murray*, 234 Mich App 46, 52-55; 593 NW2d 690 (1999). Drug profile evidence is permitted to explain the significance of otherwise innocuous characteristics that drug dealers exhibit to aid the jury in understanding evidence in controlled substance cases. *Id.* The expert testimony is admissible if the expert is qualified, the evidence gives the trier of fact a better understanding of the evidence or assists in determining a fact in issue, and the evidence is from a recognized discipline. *Id.*

In the present case, defendant contends that Officer Olsen was not qualified because of his limited education in narcotics. However, Officer Olsen was properly qualified based on his training coupled with his extensive experience in narcotic arrests and execution of narcotic search warrants. Officer Olsen's testimony regarding the significance of the amount of drugs, the cash, and the weapon was not within the knowledge of a layman and aided the jury in determining defendant's guilt of the charged drug offense. See *People v Ray*, 191 Mich App 706, 707-708; 479 NW2d 1 (1991). Accordingly, the trial court did not abuse its discretion by allowing the expert drug profile testimony. *Murray, supra.*

Defendant next alleges that there was insufficient evidence to support the felony-firearm and felon in possession convictions. We disagree. When reviewing a challenge to the sufficiency of the evidence to support a conviction, the appellate court reviews the evidence in a light most favorable to the prosecution. *People v Sherman-Huffman*, 466 Mich 39, 40; 642 NW2d 339 (2002). The Court must consider whether the evidence at trial justified a rational trier of fact in finding that the elements of the crime were proved beyond a reasonable doubt. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The requirement of possession of a firearm may be satisfied by actual or constructive possession and may be proved by circumstantial evidence. *People v Burgenmeyer*, 461 Mich 431, 436-437; 606 NW2d 645 (2000). The appropriate focus for determining possession does not involve the circumstances at the time of arrest, but rather the circumstances surrounding the possession of the gun at the time of commission of the felony. *Id.* at 438-439. Thus, irrespective of the fact that defendant was not found in the room with the gun at the time of the raid, there was sufficient evidence of possession to support the conviction. The gun was located in the bedroom where other evidence of drug trafficking was present, and the parties stipulated that defendant had a prior felony conviction. Therefore, this claim of error is without merit.

Defendant next alleges that the trial court's failure to sua sponte provide a cautionary instruction regarding the expert drug profile testimony requires reversal. We disagree. Where there is no request for a limiting instruction, the issue is reviewed for plain error that affected defendant's substantial rights. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002). Reversal is warranted only if the unpreserved error resulted in the conviction of an actually innocent defendant or when the error seriously affected the fairness, integrity or reputation of the judicial proceedings. *Id.* Review of the record reveals that plain error is not present. A cautionary instruction regarding the appropriate use of drug profile testimony was unnecessary under the defense theory of the case. Defense counsel argued that the testimony of Officer Olsen should be disregarded because of his limited education and his supervision by other officers, who were experts but did not testify at trial.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski

/s/ Karen M. Fort Hood